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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte THOMAS KOTLARSKI
and PETER DE BLOCK

Appeal 2008-0541
Application 09/674,447
Technology Center 1700

Decided: March 27, 2008

Before CHARLES F. WARREN, PETER F. KRATZ, and
CATHERINE Q. TIMM, *Administrative Patent Judges*.

WARREN, *Administrative Patent Judge*.

DECISION ON APPEAL

Applicants appeal to the Board from the decision of the Primary Examiner finally rejecting claims 2 through 6, 8 through 13, 16 and 17 in the Office Action mailed April 19, 2005. The Examiner subsequently refused to allow these claims as amended in the Amendment filed August 19, 2005, as entered in the Office Action mailed August 31, 2005. 35 U.S.C. §§ 6 and 134(a)(2002); 37 C.F.R. § 41.31(a)(2006).

We affirm the decision of the Primary Examiner.

Claim 16, which includes reference to numerals in the Specification Figures, illustrates Appellants' invention of a wiper blade for window panes in motor vehicles, and is representative of the claims on appeal:

16. A wiper blade for window panes in motor vehicles, comprising an elongated rubber-elastic wiping strip (20) contactable with a window pane and having two longitudinal sides in which open-edged longitudinal receiving grooves (32) are arranged in a plane approximately parallel to the window pane, with a longitudinal web (36) provided between bases of the receiving grooves (32); a carrying element having two strip-shaped elongated, resilient carrying rails (12) which are accommodated in the grooves (32) so that the wiping strip (20) is located directly on a lower side of the carrying rails (12); a connection device for a wiper arm, which is a part of the carrying element and in a middle region is arranged directly on an upper side of the carrying rails (12), and the carrying rails being secured in the receiving grooves (32) transversely to their longitudinal extension with L-shaped claws wherein a first L-leg (48) of each L-shaped claw traverses outer edges (52) of the carrying rails (12) and a second L-shaped leg (50) engages under the respective carrying rail (12), wherein a distance (60) measured transverse to a longitudinal extension of the wiper blade (10) between facing inner edges of the first L-leg (48) is less than a sum of a width (62) of the two carrying rails (12) plus a width of the longitudinal web (36) of the wiping strip (20), so that the wiping strip (20) is held by a compression produced in the web in the middle region of the wiper blade under the connection device relative to the carrying element.

The Examiner relies upon the evidence in these references (Ans. 3):

Oishei	US 3,386,123	Jun. 4, 1968
Rosen	US 3,659,310	May 2, 1972
Samartgis	US 5,713,100	Feb. 3, 1998
Merkel ¹	DE 196 27 115 A1	Jan. 8, 1998

Appellants request review of the grounds of rejection under 35 U.S.C. § 103(a) advanced on appeal (Br. 5):

¹ We refer to the translation of Merkel prepared for the USPTO by Schreiber Translations, Inc. (PTO 06-2366 February 2006) made of record via the form PTO-892 attached to the Office Communication mailed May 12, 2006.

claims 2 through 6, 8, 9, 16, and 17 as unpatentable over Merkel in view of Rosen (Ans. 4);

claims 2 through 6, 8 through 11, 16, and 17 as unpatentable over Merkel in view of Oishei (Ans. 6); and

claims 12 and 13 as unpatentable over Merkel in view of Oishei, further in view of Samartgis (Ans. 4)

Appellants argue the claims in the first and second grounds of rejection on the basis of independent claims 16 and 17 as group. Br., e.g., 8, 9, and 10. Appellants rely on the same arguments advanced for claim 16 with respect to the third ground of rejection. Br. 11. Thus, we decide this appeal based on claim 16. 37 C.F.R. § 41.37(c)(1)(vii)(2006).

The principal issues in this appeal are whether the Examiner has carried the burden of establishing a *prima facie* case of each of the ground of rejection. These issues turn on the dispositive issue of whether the combined teachings of Merkel and the other references as applied would have reasonably suggested to one of ordinary skill in this art a wiper blade in which wiping strip 20 is held by compression produced in web 36 in the middle region of wiper blade 10 under connection device 16 relative to the carrying element of carrying rails 12 in receiving grooves 32, as specified in the last clause of claim 16.

Connection device 16, not identified by numeral in claim 1, as illustrated in Fig. 1, is disposed in the middle region of wiper blade 10 and serves as the attachment point for wiper arm 18. Spec. 4. Connection device or holder 16 is further illustrated in Figs. 2, 3, and 6, showing L-shaped claws 46, with L-legs 48, 50, and the position of rails 12 therein as well as the location of web 36, of wiping strip 2, between rails 12 that are accommodated in grooves 32. Spec. 4-7. The distance 60 between L-legs

48 is illustrated in Fig. 3, and the widths 62 of rails 12 and the width 64 of web 36 are illustrated in Fig. 3. Spec. 5-8.

The step of mounting wiping strip 20 with rails 12 in grooves 32, in claws 64 is illustrated in Fig. 3. Spec. 7. The resulting compression of web 36 because the width 60 between L-legs 48 of claw 46 is less than the sum of widths 62 of rails 12 and width 64 of web 36, is illustrated in Fig. 2. Spec. 7-8. A disclosed variation of the linear compression of web 36 illustrated in Fig. 2 is the situation occurring where web 36 is compressed to the extent residual cover strip 40 of wiping strip 20 is forced upward to any extent into groove 54 of connection device 16, so that the angle between lower surfaces 20 of rails 12 is less than 180° as illustrated by Fig. 5. Spec. 5 and 7-8, and Figs. 2 and 3.

We find Merkel would have disclosed to one of ordinary skill in this art wiper blade 10 wherein wiper strip 14 has rails 28, 30 in grooves 24, 26. Merkel, e.g., 6-7 and Figs. 1-5. The ends of wiper blade 10 are secured by clips 50 as illustrated in Fig. 1, wherein L-shaped claws 52 hold the rails in the grooves as illustrated in Fig. 4. Merkel 8.² Merkel discloses “[b]y means of . . . compression of the clips [50] is achieved a specific deformation of the wiper strip body 22, whereby a securing of the support element 12 on the wiper strip and a securing of the clips 50 that belong to the support element 12 on the wiper strip can be achieved.” Merkel 8-9.³

Merkel further discloses connecting device 66 in the middle region of wiper blade 10 which serves as the attachment point for wiper arm 18.

² See also Appellants’ translation of col. 3, ll. 9-13, of Merkel’s Offenlegungsschrift. Br. 6.

³ See also Appellants’ translation of col. 3, ll. 27-32, of Merkel’s Offenlegungsschrift. Br. 6.

Merkel 10 and Fig. 1. Connecting device 66 has a chip 60 at each end and the clips 60 are similar in configuration to clips 50 but differ in that rails 28, 30 fit into the L-shaped claws 62. Merkel 9 and 10, and Figs. 2 and 3. Merkel discloses “[t]he securing of the intermediate clips [60] on the wiper strip [14] occurs likewise as was described with reference to the end clips 50.” Merkel 9.

We find Rosen would have disclosed to one of ordinary skill in the art a windshield wiper squeegee blade wherein the two parts 17 of spine piece 11 are accommodated in grooves or slots 18 on either side of neck web 19 of blade 12. Rosen col. 2, ll. 36-68, and Figs. 1-3. Blade 12 is secured by clamps or claws 13 which have L-shaped legs that surround the ends of parts 17 of spine piece 11, such that claws 13 “apply clamping force as between the . . . [parts] 17 so as to securely hold the blade 12 therebetween the supported in the slots 18 forming the neck 19 between the head 20 and the body 21 of the blade 12.” Rosen col. 2, ll. 43-54, and Figs. 1 and 2. “This [arrangement] forms a resilient cushion against which the claw 13 reacts forcing the . . . [parts] 17 toward each other and deformably gripping the neck 19 of the wiper blade 12. The consequence of such holding is to resiliently compress the material of the blade and to extrude by deformation in a direction toward the blade tip 23 and upwardly into the head 20.” Rosen col. 2, ll. 54-60. This construction “can be repeated selectively along the length of the blade and at intervals desired in accord with a specific installation.” Rosen col. 2, ll. 62-66.

We find Oishei would have disclosed to one of ordinary skill in the art windshield wiper blade with superstructure 10 having claws 22 with

L-shaped legs that engage edges of side rails 31 of backing rail 24, which rails are on either side of the neck of blade 29. Oishei col. 2, ll. 16-66, and Figs. 1-5. Claws 22 compress rails 31 into the neck of blade 29. Oishei col. 3, ll. 16-26.

A discussion of Samartgis is unnecessary to our decision.

We determine the combined teachings of Merkel and Rosen and of Merkel and Oishei, the scope of which we determined above, provide convincing evidence supporting the Examiner's case that the claimed invention encompassed by claim 16, as we interpreted this claim above, would have been *prima facie* obviousness to one of ordinary skill in the window pane wiping arts familiar with the wiper blades for the window panes of vehicles. We find no difference between the parts of the claimed wiper blade and that disclosed by Merkel. Indeed, the L-shaped claws of the respective connecting devices grip and compress the carrying rails into the web of the blade between the grooves accommodating the rails in the same manner.

Thus, the claimed wiper blade and that of Merkel result in compression in the web of the wiper strip in the same manner specified by the last clause of claim 16. In this respect, we determine one of ordinary skill in this art would have found the teaching of the retention of the blade bodies within the claws by compression in Merkel's disclosure that clips 60 can be secured by compression in the manner described by clips 50.⁴ Thus,

⁴ It is well settled that a reference stands for all of the specific teachings thereof as well as the inferences one of ordinary skill in this art would have reasonably been expected to draw therefrom, *see In re Fritch*, 972 F.2d 1260, 1264-65 (Fed. Cir. 1992); *In re Preda*, 401 F.2d 825, 826 (CCPA 1968), presuming skill on the part of this person. *In re Sovish*, 769 F.2d 738, 743 (Fed. Cir. 1985).

there is evidence in Merkel alone supporting the Examiner's position. The Examiner's position is reinforced by the teachings of Rosen and Oishei establishing it was known in the art that the same L-shaped claw construction interacting with carry rails accommodated in grooves on either side of the web of a wiper strip, holds the assembly together by compression in the same manner. On this record, we determine this person would have recognized that the compression thus taught by Merkel, Rosen, and Oishei would result in the linear compression illustrated in Specification Fig. 2 as well as in the deflected compression illustrated in Specification Fig. 5.

Accordingly, *prima facie*, one of ordinary skill in this art routinely following the combined teachings of Merkel and Rosen and of Merkel and Oishei would have reasonably arrived at the claimed wiper blade encompassed by claim 16, including all of the limitations thereof, without recourse to Appellants' Specification. *See, e.g., KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1739 (2007)(a patent claiming a combination of elements known in the prior art is obvious if the improvement is no more than the predictable use of the prior art elements according to their established functions); *In re Kahn*, 441 F.3d 977, 985-88 (Fed. Cir. 2006); *In re Keller*, 642 F.2d 413, 425 (CCPA 1981) (("[T]he test [for obviousness] is what the combined teachings of the references would have suggested to those of ordinary skill in the art.")); *Sovish*, 769 F.2d at 743.

Upon reconsideration of the record as a whole in light of Appellants' contentions, we are of the opinion that Appellants have not successfully rebutted the *prima facie* case. We found above that the teachings of Merkel are not limited to compression resulting from end clips 50 relied on by Appellants (Br. 6-7). Even if the teachings of Merkel and of Rosen and

Oishei was so limited, as Appellants contend (Br. 6-10), it is clear from Merkel alone as well as the combination thereof with the teachings of the other references, that one of ordinary skill in this art would have known that structure conferring compression can be used along the wiper blade, including the middle region thereof. *See, e.g., KSR*, 127 S.Ct. at 1739; *Kahn*, 441 F.3d at 985-88; *Keller*, 642 F.2d at 425; *Sovish*, 769 F.2d at 743.

Accordingly, based on our consideration of the totality of the record before us, we have weighed the evidence of obviousness found in the combined teachings of Merkel and Rosen and of Merkel and Oishei alone and as further combined with Samartgis, with Appellants' countervailing evidence of and argument for nonobviousness and conclude that the claimed invention encompassed by appealed claims 2 through 6, 8 through 13, 16 and 17 would have been obvious as a matter of law under 35 U.S.C. § 103(a).

The Primary Examiner's decision is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv)(2007).

AFFIRMED

PL Initial:
sld

Appeal 2008-0541
Application 09/674,447

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